

**1Report of the Family Law Section
Committee on Family Support
May 30, 2003**

On May 29, 2003, the following people met to discuss the proposed modifications to the Michigan Child Support Manual of the State Court Administrative Office, Friend of the Court Bureau: Susan Paletz (Chairperson of the Family Law Section), Elizabeth Sadowski (Chairperson-Elect of the Family Law Section), Ron Bookholder (past Chair of the FLS and present Chairperson of American Academy of Matrimonial Lawyers), Craig Ross (former Washtenaw County Referee and drafter of the computer program calculating the child support formula and the alimony guidelines), Kent Weichman (former Friend of the Court Washtenaw County and member of SCAO Friend of the Court Advisory Committee, Family Support Committee member and proposer of the SER “cube formula”), Carlo J. Martina (FLS Council Member and Chair of the Family Support Committee) and Nina Dodge Abrams (FLS Council Member and member of the Family Support Committee). Below is the summary of the Committees unanimous recommendations.

ADM 2003-22:1 Citation and Reorganization of Contents

The Committee supports this provision.

ADM 2003-22:2 Calculation of Child Support Before Spousal Support

- I. Manual Text Change [MTC] 2.01 Sources and Variations in Income
MFT 2.01(F)(29) Alimony/Spousal Support paid by someone other than the other parent of the case under consideration.

The Committee suggests the following change,

“(29) Except as otherwise provided in 2.11(A)(1), alimony/spousal support paid by someone other than the other parent of the case under consideration.”

Please see the rationale under proposed MTC 2.11(A)(1) for a discussion of calculating spousal support/alimony after calculating child support and the need to account for the reduction in the amount of income available to pay spousal support by the amount of the child support. The above provision makes MTC 2.01(F)(29) consistent with the later proposed additions to MTC 2.11(A)(1).

- II. MTC 2.11 Allowable Deductions from Gross Income; MTC 2.11(A)(1)
Alimony/Spousal Support

The Committee supports these changes but further recommends the following language be added and required as part of MTC 2.11(A)(1):

“Any alimony/spousal support orders paid to someone other than the other parent of the

case under consideration should be deducted prior to the calculation and deduction of federal, state, and local income taxes. *In the event spousal support/alimony is found to be appropriate in the case under consideration, then spousal support shall be based on the net income of the payer and the payee after considering payment of child support and child care expenses. Further, the Court shall consider, or the parties may agree, on the re-allocation of spousal support/alimony and child support to benefit net family income so long as spousal support/alimony shall be income for the support and maintenance of a spouse. See also MTC 1.04 (D)(2), 1.04(D)(4)(l) and 1.04(D)(5)."*

ADM 2003-22:3 Shared Economic Responsibility Retroactive Clarification

The Committee supports this change.

ADM 2003-22:4 Deviation from the Formula

I. MTC 1.04(A) Required Application.

The Committee supports this change.

II. MTC 1.04(B) Agreements to Deviate

The Committee believes the language is unclear and needs technical corrections. It should read, "MCLA 552.603(2) does not prohibit the court from entering a support order that is agreed to by the parties and that deviates from the child support formula, if the requirements of [MTC] 1.04(C)(2) and 1.04(C)(1) factors (a) - (d) are recorded in the order."

The Committee agrees that the language regarding the intent of the Court or the parties should be included in the order to assist the parties or the Court if future modifications to spousal support/alimony or child support are sought.

III. MTC 1.04(C) Deviation Requirements

The Committee supports this change.

IV. MTC 1.04(D) Deviation Criteria

- A. The Committee recommends changing the title to "*Deviation/Adjustment Criteria*". "Adjustment" would describe the situation in the proposed changes to 2.11(A)(1) above and to 1.04(D)(2), 1.04(D)(4)(l) and 1.04(D)(5) below.
- B. The Committee supports the Manual setting forth factors 1.04(D)(4)(a) - (k) to be considered in determining whether a deviation is appropriate, it also has concerns about the limited number of deviations and that they do

not provide for the opportunity for the court or the parties to allocate child support and spousal support/alimony to benefit the net family income to be divided among the family members. It proposes the following additional factor:

“1.04(D)(4)(l) A basis for deviation/adjustment in the child support may be appropriate as set forth in 2.11(A)(1) to benefit the net income of the family.

The reallocation of child support and spousal support/alimony to benefit the net income of the parties is not a deviation of child support per se. Rather, the court or the parties have determined the appropriate amount of funds to be available for the custodial parent. This sum is based on the combination of child support and spousal support. The amounts for each may be shifted from one the another to maximize each party's income, thereby benefiting the children.

- C. Additionally, the Committee recommends adding the following provision to reduce litigation or assist in determining changed circumstances when one of the parties seek a modification from the current order in effect.

“1.04(D)(5) Any adjustment/deviation in a court order shall express the intent of the court or the parties in the order.”

ADM 2003-22:5 Medical Support - Allocation of Premiums

The Committee believes this section should be deleted in its entirety. It conflicts with the provision allowing insurance premiums to be subtracted from the gross income of the paying party, that is, MTC 2.11(E). If MTC 3.08(A) and 2.11(E) exist side by side, this would be a double counting of health insurance expenditures.

The Committee believes the reduction of the paying party's gross income dollar for dollar for health insurance premiums for all the children covered by a court order is a better scheme than allocating the premiums between the parties based on each's gross income. 2.11(E) unnecessarily complicates the calculation of child support. And, for the same reasons outlined in ADM 2003-22:9 below, the proposal in ADM 2003-22:5 should be eliminated. It adds more burdens to families and the Friend of the Court personnel without any offsetting benefits to families. Also, the section uses weekly numbers instead of the new requirement for stating numbers in terms of months.

ADM 2003-22:6 Medical Support - Premiums for other children

The Committee supports this provision. However, the title of this section should be changed to “Premiums for all children”

ADM 2003-22:7 Medical Support - Reasonable Cost of Insurance

The Committee supports this provision.

ADM 2003-22:8 Medical Support - Responsibility to Insure

The Committee supports this provision.

ADM 2003-22:9 Medical Support Changes

The Committee believes the present system is working and functions effectively in calculating children's medical expenses, allocating them between the parties, and securing the collection between the parties. The proposed new section, specifically MTC 3.08(A), 3.08(C), 3.08(D) and 3.08(E), should be deleted in its entirety. It is burdensome on families as well as the Friend of the Court staffs. It does not make a difference in the support amount over the present system, thus there is no additional benefit to the payee. It is an incredibly cumbersome process for the families and the Friend of the Court to implement, further no one is requesting from a change to the present system. "If it isn't broke, don't fix it."

ADM 2003-22:10 Shared Economic Responsibility 52 overnights

The Committee supports MTC 3.05, Shared Economic Responsibility, except it believes that 92 overnights would benefit families and the court process to a much greater degree. The rationale is that most family parenting agreements fall within the 92 overnights. This would permit the continued use of the language "reasonable and liberal overnight parenting time" provisions and the use of 6 overnight abatement provision. Also, 92 overnights is 25 percent of the days in the year, so it would make more sense to the parties to begin the shared economic responsibility formula when there are more than 92 overnights.

The Committee does not support MTC 3.06 Shared Economic Adjustments. The section should be deleted in its entirety. 3.06 is a "messy" quagmire. All arrearages would be moving targets, thus making collections of child support more complicated. Also, this proposal is contrary to federal law concerning the requirement for no retroactive modifications. Its creates an unnecessary burden for parties and the friend of the court as well as reduces federal payments to the friend of the court.

3.06(A) requires calendars and counting by the parties, these requirements discourages co-parenting by the parties and encourages ownership of the children for a financial benefit. The children become the source of parental fighting. 3.06(B), 3.06(C) and 3.06(D) also discourage flexibility in parenting time. The Courts have not been able to and cannot require a parent to spend quality time with his or her children.

Any changes in shared economic responsibility child support should be prospective not retroactive. If the 21 days were used retroactively, then the calculation of support arrears would be a nightmare for everyone. Support orders would not be enforceable. All calculations would have to go back one year, day by day. "He said/ she said" arguments would be raised to a new art form. If one of the parties thinks the numbers of days in the past year did not meet the provisions of the current order and thus wants an adjustment in child support, the calculation of child

support should be retroactive only to the date of filing the petition as are all other changes in support.

If any part of this Section should remain then it would be 3.06(E), however until there is more experience with the changes sought, the provisions 3.06 (A) - (D) should be eliminated.

ADM 2003-23:11 Social Security Benefits

The Committee did not consider this provision.

Respectfully submitted,

Susan E. Paletz, Family Law Section Chairperson